

<b>DIVISION OF MINED LAND RECLAMATION</b>		<b>PROCEDURE NO.</b>	2.1.03
<b>PROCEDURES MANUAL</b>		<b>ISSUE DATE</b>	April 17, 2006
<b>SUBJECT</b>	Unpermitted/Exempted Sites	<b>Section</b>	Reclamation Services /AML
		<b>Last Revised</b>	3-12-97

**OBJECTIVE AND INTENT:**

To ensure unpermitted, exempted, or abandoned coal mining sites are promptly identified and investigated by DMLR personnel.

**GENERAL:**

DMLR field personnel must be on the constant lookout for unpermitted coal mining operations or abandoned coal-mining sites, which may be subject to the agency's jurisdiction. Abandoned mine sites should be noted on the supervisor report/spreadsheet of potential AML site projects. While traveling through his or her assigned geographic area, the employee should be ever alert to identify these types of sites for potential agency action.

**Right of Entry (Coal Regulatory Program) -**

45.1-244A(3) of the Act allows the Director or any of his authorized representatives to enter upon and investigate any coal surface mining operation without a search warrant. The authorized representative has the right to enter any and all operations as long as there is probable cause that mining may be occurring. However, entry into a building shall be conducted only upon the consent of the permittee or by search warrant.

To determine whether to obtain a search warrant, the authorized representative should contact the first line supervisor (or the Reclamation Services Manager, if the supervisor is unavailable). If the situation requires a warrant, the Reclamation Services Manager shall promptly authorize the Field Inspector to obtain such from the proper legal authority.

**Right-of-Entry (Abandoned Mined Land Program) -**

45.1-263 of the Act and Part 4 VAC 25-130-877, 4 VAC 25-130-877.13 and 4 VAC 25-130-877.14 provide the Division's personnel the authority to enter (for the purposes of reclamation) upon abandoned mined land affected by coal mining. The statute and regulations delineate the procedures for entry upon property for study, exploratory work, and normal and emergency reclamation.

In an emergency, entry is authorized without landowner consent - The AML Manager must ensure that a finding of fact is made substantiating that an emergency exists. The finding shall explain how the situation constitutes a danger to the public health, safety, or general welfare and whether any other person or agency is present to expeditiously abate the problem.

In non-emergency situations - Where landowners consent is not given, or the landowner is not known, entry may be exercised after the procedures set forth under 4 VAC 25-130-877.13(b) and (c) are followed.

**COAL REGULATORY PROGRAM**

**Conducting Site Investigations:**

Upon finding a suspected coal related disturbance, the employee will immediately notify the Reclamation Services' Office Services Specialist, who will assign a tracking number and promptly notify the Division of Mines (or any other appropriate Division) of the operation. The interdivision notification will describe the minesite location, the suspected operator's name, if known, and the DMLR's Field Inspector's name and phone number.

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The Field Inspector should immediately (not later than the next working day) exchange information with the Division of Mines or Gas and Oil inspector, and determine whether a joint on-site investigation is needed.

Upon reaching the unpermitted site, the Inspector shall present credentials to the operator or person(s) participating in work at the site. If denied the right of entry, the employee will contact the supervisor or the Reclamation Services Manager.

The Supervisor or Reclamation Services Manager shall decide the course of action to take (e.g. seeking assistance of State Police to accompany the Inspector; initiating civil or criminal action against the operator; or determining that no further action is needed). The decision shall be promptly relayed to the Inspector.

These same procedures will be used on subsequent visits, should the employee be denied the right-of-entry.

When conducting the investigation, the Inspector should:

- explain the reason(s) for being at the site, as well as the duty of an authorized representative to inspect the site.
- advise the operator or person (who is preventing access) of the permitting requirements, exemptions available under state and federal law, and the consequences for refusing to grant access:
  1. a civil penalty of up to \$5,000 per day per violation (45.1-246B), or
  2. a criminal penalty of up to \$10,000 or one year in jail, or both, per violation (45.1-246E).

If the employee is impeded in conducting the investigation, the operator or person should be advised of the consequences of such action (potential fine of \$5,000, one year imprisonment, or both - 45.1-257 of the Act; also see Procedure #1.2.01).

Should a confrontation be anticipated, other Division personnel shall accompany the employee.

If a confrontation occurs, the Division’s employee(s) should leave the site in a professional manner and contact the Supervisor with the facts concerning the situation.

In a potential life-threatening situation or where departure from the site is not possible, the Big Stone Gap office should be immediately contacted by radio so appropriate authorities may be summoned.

Jurisdiction Determination:

Should the mining or removal of coal be occurring at the site, a determination must be made as to whether the operation is exempt or non-exempt from Chapter 19 standards. The regulatory definition of “affected area” (45.1-229 and 45.1-253 of the Act, and 4 VAC 25-130-700.5 and 4 VAC 25-130-700.11(a) of the regulations) must be reviewed by the Inspector to determine if the Division has jurisdiction over the operation.

If the extraction of coal is incidental to the extraction of other minerals, refer to 45.1-229 of the Act and Procedure #2.1.04.

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A site is considered exempt if the extraction of coal is:

- an incidental part of a government-financed project. The criteria of 4 VAC 25-130-707.11 and 4 VAC 25-130-707.12 must be met. (also see Procedures #2.1.06 and 4.1.04)
- by a landowner for his own non-commercial use from land owned or leased by him. The criteria of 4 VAC 25-130-700.11(a)(1) must be met.

Should the site be determined “non-exempt”, the following types of information should be gathered by the Inspector or Supervisor, where practical, and without causing undue delays:

- When initial overburden is disturbed, be able to show that the intent of the operator is to commercially market the coal (such as contracts for sale, DM licenses, MSHA ID number, operators name, surface owners, mineral owner, any lease agreements, equipment used with its ID number, financial agreements on equipment sales, location of relative coal seams or identification of mineral). This information will be compiled by the Inspector or Supervisor with recommendations made to the Reclamation Services Manager. The Reclamation Services Manager will determine the type of enforcement action that will be pursued.
- When coal has been removed, the same information as listed in Item (a) should be gathered with the addition of an estimation of tonnage removed from the area, thickness of coal seam, whether coal is stockpiled on the site or removed from the site, and if any other operations are in the area. Analysis of the coal would be helpful as well.
- When coal/mineral has been sold, the same information as listed in items (a) and (b) above; with the inclusion of photographs (see Procedure #3.1.05) of coal or mineral being loaded and then dumped at a dock, etc., any dock records such as weight sheets, payment for coal (i.e. canceled checks), names of truck drivers, etc., is required.

The Inspector shall update the file and perform inspections concerning the site at least quarterly, or as needed, until coal related activities have ceased and the area is properly reclaimed.

Surveillance of Site:

When conducting surveillance or investigations during non-routine business hours, two DMLR employees must be present. A third person shall check on the employees at previously agreed intervals (such as every hour). The first line supervisor responsible for the geographic area where the disturbance is located shall select the employees. The selection should be based on each of the employees workload, familiarity with the area involved, and the knowledge of surveillance and investigation procedures.

Backup planning must be conducted and communicated to all involved prior to the surveillance or investigation.

The Supervisor may request assistance from other Division and Department employees. The Supervisor shall plan for effective communications to ensure the participants are not placed in a perilous situation (i.e. notification of when the surveillance begins, checking in during the surveillance, and notification when the surveillance ends).

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The Reclamation Services Manager or Division Director must be notified the next working day after the surveillance is completed.

Compensatory leave may be earned according to DMME Personnel Policy when work is performed beyond the regularly scheduled workday hours.

DMME vehicles will be used during surveillance unless prior approval to use other State owned vehicles is obtained from the appropriate authorities. Due to liability involved, personal vehicles shall not be used when conducting surveillance and investigations.

If the investigation reveals illegal coal mining activity, the Inspector, after consulting with the Supervisor and Reclamation Services Manager, shall immediately decide as to what enforcement action(s), if any, will be initiated to bring the site into compliance with the Act.